

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2024

DOCKET NUMBER: AR20240003705

APPLICANT REQUESTS:

- publish orders for the period 20 December 2020 through 26 January 2021
- correction of DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending on 19 December 2020 to reflect continuous service through 26 May 2021

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Request to Expedite Army Board for Corrections of Military Records (ABCMR) in the Restoration of Medical Benefits, Pay and Allowances, 26 February 2024
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, 18 July 2023
- Orders Number D 207-13, 26 July 2023
- Memorandum – Subject: Line of Duty Determination, 6 November 2022
- National Guard Bureau (NGB) Form 23A (Army National Guard (ARNG) Current Annual Statement), 30 August 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 December 2020
- Orders Number 5637151, 9 August 2023
- Orders Number 29-177-1134, 26 June 2019
- Orders Number 29-177-1134 (A1), 3 August 2019
- Orders Number 29-177-1134 (A2), 17 March 2020
- Orders Number 29-177-1134 (A3), 7 June 2020
- Orders Number 29-177-1134 (A4), 5 September 2020
- Orders Number 29-177-1134 (A5), 5 October 2020
- Orders Number MM-0261-00034, 17 September 2020
- Orders Number MM-0261-00034A01, 24 November 2020
- Orders Number NG-1020-00001, 20 January 2021
- Orders Number NG-1020-00001A01, 20 April 2021

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in pertinent part that the current gap in his active-duty orders has resulted in breaks of medical coverage under the Transitional Assistance Management Program (TAMP). He contests that the gap in his active-duty service should not have occurred. He notes that during the requested period of service (20 December 2020 – 26 January 2021) he did not receive any military pay entitlements or medical benefits due to the gap in his military service. He is currently medically retired and references ABCMR Docket Number AR20220011892 as a case with similar circumstances as his.

3. A review of the applicant's available military service reflects the following:

a. On 30 December 2014, the applicant enlisted in the ARNG for 8 years.

b. On 26 June 2019, the [REDACTED] ARNG issued Orders Number 29-177-1134 ordering the applicant to active duty in support of Operation Enduring Freedom, effective 12 August 2019 for a period of 400 days.

c. On 2 April 2020, the applicant elected to extend his current enlistment in the ARNG by 6 years.

d. On 7 June 2020, the [REDACTED] ARNG issued Orders Number 29-177-1134 (A3) amending Orders Number 29-177-1134 to reflect a duration change from 430 days to 483 days.

e. On 17 September 2020, Headquarters, U.S. Army Medical Command issued Orders Number MM-0261-00034 retaining the applicant on active duty under the provisions of Section 12301 (H), Title 10 USC, effective 21 September 2020, for a period of 60 days (19 November 2020 end date) to participate in Reserve Component Soldier in Transition Medical Retention Processing Program for the completion of a Medical Evaluation.

f. On 5 October 2020, the [REDACTED] ARNG issued Orders Number 29-177-1134 (A5) amending Orders Number 29-177-1134 to reflect a duration change from 483 days to 406 days.

g. On 19 December 2020, the applicant was honorably released from active duty in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4 (Completion of Required Active-Duty Service).

h. On 20 January 2021, the NGB issued Orders Number NG-1020-00001 ordering the applicant to active-duty to participate in Reserve Component Managed Care-Mobilization for Managed Medical Care, effective 27 January 2021, for a period of 90 days (26 April 2021 end date).

i. On 20 April 2021, the NGB issued Orders Number NG-1020-00001A01 amending Orders Number NG-1020-00001 to reflect a duration change from 90 days (26 April 2021) to 120 days (26 May 2021).

j. On 18 July 2023, an Informal Physical Evaluation Board convened finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired due to diagnosed Post Traumatic Stress Disorder.

k. On 26 July 2023, Headquarters, U.S. Army Physical Disability Agency issued Orders Number D 207-13 releasing the applicant from assignment and duty because of a physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, effective 25 August 2023.

4. The applicant provides:

a. Memorandum – Subject: Request to Expedite ABCMR in the Restoration of Medical Benefits, Pay and Allowances, dated 26 February 2024, reflective of the [REDACTED] ARNG Adjutant General's request for expedited processing of the applicant's submitted request. The issue created a severe hardship for several service members who experienced a break in service which resulted in a lapse of medical care and suspension of pay and allowances.

b. Memorandum – Subject: Line of Duty Determination, dated 6 November 2022, reflective of the applicant's condition of Post Traumatic Stress Disorder being determined to have been incurred or aggravated during a qualified duty status greater than 30 days and further establishes service connection for his Disability Evaluation System referral.

c. NGB Form 23A dated 30 August 2023, reflective of the applicant's qualifying service completed between 30 December 2014 – 25 August 2023.

d. Orders Number 5637151 dated 9 August 2023, reflective of the applicant being placed on the Permanent Disability Retired List, effective 26 August 2023.

e. Orders Number 29-177-1134 (A1) dated 3 August 2019, reflective of Orders Number 29-177-1134 being amended to reflect a change in the Line of Accounting (LOA).

f. Orders Number 29-177-1134 (A2) dated 17 March 2020, reflective of Orders Number 29-177-1134 being amended to reflect a change in the duration from 400 days to 430 days.

g. Orders Number 29-177-1134 (A4) dated 5 September 2020, reflective of Orders Number 29-177-1134 being amended to reflect a change in the LOA.

h. Orders Number MM-0261-00034A01 dated 24 November 2020, reflective of Orders Number MM-0261-00034 being amended to reflect a change in the duration from 60 days to 90 days (19 December 2020 end date).

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.
  
2. The Board carefully considered the applicant's contentions, his record of service, the series of ARNG and MEDCOM orders, the outcome of his PEB and his medical retirement. The Board considered the break in his service and the endorsement from the [REDACTED] ARNG TAG for expedited processing. Based on a preponderance of evidence, the Board determined that the service break was unjust and that a correction to his record was warranted to reflect continuous active duty.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by:

- amending U.S. Army Medical Command Orders MM-0261-00034 dtd 17 September 2020 to show: PERIOD OF ACTIVE DUTY – 129 DAYS, END DATE – 26 JANUARY 2021
- amending the DD Form 214 for the period ending 20201219 to show in item 12b 20210126 and in item 12c 00010516
- providing the applicant all active duty pay and benefits as a result of this correction for the period 20201220 thru 20210126

X 

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. AR 600-77 (Administrative Management of Wounded, Ill, or Injured Soldiers), prescribes policy, procedures, and administrative guidance for the management and support of wounded, ill, or injured Soldiers. Wounded, ill, or injured Soldiers are administratively and medically managed by the Soldiers' organic command, State and Territory (for Army National Guard), regional support commands (for U.S. Army Reserves), U.S. Army Human Resources Command (for individual ready reserve) and Warrior Transition Units and Community Care Units during time of injury through return to duty, or transition to civilian life through medical processing.

a. Chapter 3 (Eligibility and Application Processes for Medical Care of Wounded, Ill, and Injured Soldiers) provides that Soldiers who have incurred or aggravated a wound, illness, or injury and are found medically non-deployable by a military medical authority, but can receive treatment that will change their status to deployable in a reasonable timeframe (less than 90 days), will be kept on partial mobilization orders and managed by the installation or unit to which they are assigned or attached. If, at any time, a military medical authority determines the Soldier will not Return to Duty (RTD) within a reasonable time (less than 90 days), the Soldier will be retained on active duty to receive medical treatment or to undergo Disability Evaluation System (DES) processing, subject to his or her consent to remain on active-duty orders. If the Soldier agrees to remain on active duty for medical treatment, he or she is attached to the installation Warrior Training Unit (WTU) on 10 USC 12301(h) orders. If the Soldier declines to remain on active duty for medical treatment, he or she will be released from active duty (REFRAD) back to his or her respective Reserve Component (RC) unit.

b. Reserve Component Soldiers on active-duty orders for more than 30 days who incur or aggravate a wound, illness, or injury with a definitive treatment plan requiring one of the following are eligible to request voluntarily retention on active duty:

- require definitive care
- a permanent profile that refers the Soldier to the DES. If approved the Soldier will be retained on active duty until he or she meets their medical retention determination point and is returned to duty or separated/retired as a result of the DES process

3. AR 635-8 (Separation Processing and Documents) provides that the DD Form 214

is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. When separation is ordered, the separation approval documents must be present for transition processing to occur. Source documents, as listed below, must be present in a Soldier's record in order to complete the DD Form 214. Source documents will consist of:

- Service Member's Record Brief
- Separation approval documents
- Separation order
- Any other document authorized for filing in the Army Military Human Resources Record

DD Form 214, Item 12b (Separation Date This Period) will contain the Soldier's transition date. This date may not be the contractual date if the Soldier was separated early, voluntarily extends, is extended to make up lost time, or is retained on active duty for the convenience of the Government.

4. AR 600-8-105 (Military Orders) provides that orders are published to order individuals onto active duty or change the status of military personnel on active duty. Only the organization that published the original order may amend, rescind, or revoke the order. When there is no evidence of fraud or obvious error and the Soldier received actual or constructive delivery, orders discharging a Soldier from the service will not be revoked after the effective date of discharge unless the revocation is a written confirmation of verbal orders issued before the effective date of discharge. An order may be corrected by the organization that published the original order to show the true state of affairs existing at the time the original order was published. Orders may only be changed to reflect facts that existed when the original order was published.

5. AR 15-185 (ABCMR) paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//